

ROSS LLP

Peter W. Ross (SBN: 109741)

pross@rossllp.la

Tyler J. King (SBN: 262547)

tking@rossllp.la

1900 Avenue of the Stars, Suite 1225

Los Angeles, CA 90067

Telephone: (424) 704-5600

Facsimile: (424) 704-5680

Fahim Farivar, Esq. (SBN: 252153)

Fahim@farivarlaw.com

Brian Ning, Esq. (SBN: 330366)

Brian@farivarlaw.com

Catherine Y. Jung, Esq. (SBN: 337626)

Catherine@farivarlaw.com

FARIVAR LAW FIRM, APC

18321 Ventura Blvd., Suite 750

Tarzana, CA 91356

Telephone: 818.796.2060

Facsimile: 818.812.7868

Attorneys for Plaintiffs Pixior Global
Logistics, LLC and E-Comm Fulfillment 3PL

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

PIXIOR GLOBAL LOGISTICS, LLC,
a California limited liability company;
E-COMM FULFILLMENT 3PL, a
California corporation,

Plaintiffs,

vs.

WALMART, INC., a Delaware
corporation; EDWARD ROBERTS
LLC *dba* ERLifescience, a New York
limited liability company; JOSEPH
BIBI, an individual; and DOES 1-10,

Defendants.

Case No. 5:22-cv-00561

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. FRAUDULENT
CONCEALMENT**
- 3. INTENTIONAL
MISREPRESENTATION**
- 4. NEGLIGENT
MISREPRESENTATION**
- 5. UNFAIR BUSINESS PRACTICES**
- 6. QUANTUM MERUIT**

DEMAND FOR JURY TRIAL

1 4. This lawsuit seeks to hold defendants responsible for their wrongful and
2 duplicitous actions.

3 **THE PARTIES**

4 5. Plaintiff Pixior is, and at all times relevant hereto was, a California
5 limited liability company with its principal place of business in Los Angeles County,
6 California.

7 6. Plaintiff E-Comm is, and at all times relevant hereto was, a California
8 corporation with its principal place of business in Riverside County, California.

9 7. Plaintiffs are informed and believe and thereon allege that defendant
10 Walmart is, and at all times relevant hereto was, a Delaware corporation with its
11 principal place of business in Bentonville, Arkansas.

12 8. Plaintiffs are informed and believe and thereon allege that defendant ER
13 is, and at all times relevant hereto was, a New York limited liability company with its
14 principal place of business in New York, New York.

15 9. Plaintiffs are informed and believe and thereon allege that defendant Bibi
16 is, and at all times relevant hereto was, an individual residing in New York, New
17 York.

18 10. The true names and capacities, whether individual, corporate, associate,
19 or otherwise, of defendants sued herein as Does 1 through 10, are presently unknown
20 to plaintiffs, and for that reason these defendants are sued by such fictitious names.
21 Plaintiffs are informed and believe and thereon allege that each of the Doe defendants
22 is in some way legally responsible for the damages herein alleged. Plaintiffs will seek
23 leave of court to amend this complaint when the true names and capacities of said
24 defendants are known.

25 11. Plaintiffs are informed and believe and thereon allege that defendants are
26 and at all times herein mentioned were the agents, representatives, and/or employees
27 of one another and were acting within the course and scope of said agency,
28 representation and/or employment with the knowledge and consent of the remaining

1 defendants.

2 12. Plaintiffs are informed and believe and thereon allege that there exists,
3 and, at all times herein mentioned, there existed a unity of interest between defendants
4 ER and Bibi, such that any individuality and separateness between said defendants has
5 ceased, and each of these defendants is the alter ego of the other defendant, and
6 adherence to the fiction of the separate existence of the defendants would permit an
7 abuse of the corporate privilege, sanction fraud and promote injustice.

8 **JURISDICTION AND VENUE**

9 13. This Court has subject-matter jurisdiction over this action under 28
10 U.S.C. section 1332 in that the matter in controversy exceeds the sum of \$75,000,
11 exclusive of interest and costs, and is between citizens of different states.

12 14. This Court has personal jurisdiction over the defendants in that some of
13 the claims asserted herein arise out of warehousing services requested by defendants
14 in California and performed by plaintiff E-Comm in Riverside County, California.

15 15. Venue is proper pursuant to 28 U.S.C. section 1391(b)(2) because a
16 substantial part of the events or omissions giving rise to the claims occurred and
17 continue to occur in the County of Riverside, California.

18 **FACTUAL BACKGROUND**

19 **Walmart Sources Disinfectant Wipes from ER and Bibi** 20 **that Violate EPA Regulations**

21 16. In or around March 2020, the COVID-19 pandemic gripped the nation.
22 Demand for disinfectant products rose dramatically. To meet demand, retailers such
23 as Walmart turned to new, untested suppliers. Walmart turned to ER and its principal,
24 Joseph Bibi, and purchased large quantities of disinfectant wipes, marketed under the
25 brand name "Disinfex" (the "Product").

26 17. In or around February 2021, Walmart recalled the product, citing EPA
27 regulations. On information and belief, the EPA determined that the Product was
28 required to be registered; it was not; and therefore the Product could not legally be

1 sold. Further, due to the chemical composition of the Product, it had to be disposed of
2 properly. It could not simply be taken to the local garbage dump. Additional steps
3 were needed, such as shredding the Product and disposal in an approved landfill or
4 possibly incineration. In short, Walmart had a huge problem. Walmart had massive
5 amounts of Product on hand. Walmart had to get the Product off its shelves and out of
6 its stores immediately. Disposing of the Product would be time-consuming and
7 expensive. And Walmart did not want to tie up its own warehouses with this
8 worthless product.

9 18. On information and belief, Walmart conferred with Bibi and came up
10 with a plan. They would dispose of as much Product as could be properly
11 shredded/buried/incinerated within a short time frame. The balance, they would ship
12 to independent warehouses to hold until that Product could be properly destroyed as
13 well. Bibi was charged with responsibility to find the warehouse space. ER would
14 have to pay to transport the Product, store it, and dispose of it properly. Further, ER
15 would have to refund to Walmart all monies paid for the purchase of the Product in
16 the first place.

17 19. On information and belief, after refunding the purchase price to Walmart,
18 ER did not have the funds or the resources to store, or properly dispose of, the
19 Product. At all material times, Bibi was well aware of these facts.

20 20. On information and belief, in or around February 2021, Bibi, acting on
21 behalf of defendants, telephoned Chuck Price, the principal of a warehousing
22 company, known as Advance Warehouse Logistics (“AWL”), located in Rancho
23 Cucamonga, California. ER had been using AWL to import the Product from China,
24 in the first instance, and distribute the Product in the United States. Bibi explained
25 that the Product did not comply with EPA labeling requirements, and Walmart was
26 returning a large quantity, almost three million units, for relabeling. Bibi asked
27 whether AWL could accept the returned Product for storage, for a short period of
28 time, until it could be relabeled. He represented that ER would timely pay all the

1 customary charges associated with receiving, storing, and handling the Product. He
2 did not mention that: a good portion of the Product was being destroyed; destruction
3 of the Product was a slow and expensive process; Walmart did not want the Product
4 back; ER could not afford to store, or relabel, or properly dispose of the Product; and
5 ER intended to abandon the product at the warehouse (the “Concealed Facts”). Price
6 responded that AWL did not have the capacity to receive a significant volume of
7 returned Product. Bibi asked Price whether he could find alternative warehouse space.
8 He agreed to look.

9 21. On information and belief, at the time Bibi asked Price to find alternative
10 warehouse space, Bibi knew or had reason to believe that Price would repeat to
11 managers of other warehouses the representations referenced above, or the substance
12 of those representations, namely that: the Product did not meet EPA labeling
13 standards; Walmart was returning a large quantity, almost three million units, for
14 relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking whether
15 the warehouse could accept the returned Product for storage, for a short period of
16 time, until it could be relabeled; and ER would pay all of AWL’s customary charges
17 associated with receiving, storing, and handling the Product. Further, Bibi knew or
18 had reason to believe that the other warehouse managers would rely on these
19 representations in deciding whether to accept the Product for storage.

20 **Defendants Fraudulently Induce Pixior**
21 **to Accept and Warehouse the Product**

22 22. Pixior is in the business of providing warehousing and fulfillment
23 services for its customers. Pixior has warehouses in Los Angeles and Connecticut.

24 23. On or around February 26, 2021, Price, acting on behalf of defendants,
25 telephoned Pixior representative Simon Bouzaglou. Price repeated to Bouzaglou in
26 substance what Bibi had told Price: that ER had sold the Product to Walmart; the
27 Product was being returned, almost three million units, for relabeling; ER and
28 Walmart needed a place to store it temporarily, until it could be relabeled; and ER

1 would timely pay all of AWL's customary charges for receiving, storing, and handling
2 the Product. Price asked whether Pixior could store the product, for these purposes, at
3 its warehouse located at 500 Bic Drive Building 3, Milford, CT 06461 (the "Pixior
4 Warehouse"). Price and Bouzaglou discussed terms and came to the following
5 tentative agreement (the "Pixior Agreement"):

- 6 • Pixior would store the Product for a short term at the Pixior Warehouse,
7 just until the Product could be relabeled;
- 8 • The fees would match those that AWL charged to ER, as set forth on
9 exhibit A, which is incorporated herein by reference;
- 10 • Bibi's company, defendant ER, would pay the charges promptly upon
11 invoice.

12 Again, no mention was made of the Concealed Facts.

13 24. On or about March 2, 2021, Walmart representatives contacted Pixior
14 representative Christopher Motasky to confirm that Pixior would accept Product for
15 storage that was being returned from Walmart. Pixior so confirmed. Walmart
16 employee Shelby Dillinger ("Dillinger"), a senior manager of "reverse logistics" at
17 Walmart, represented to Pixior that Walmart was in charge of the Product return. She
18 took the lead in arranging for transportation of the Product. She directed and
19 coordinated the pickup of the Product from Walmart distribution centers and the drop-
20 off of the Product at the Pixior Warehouse. For these purposes, she used Walmart's
21 own supply chain and logistics provider, Yusen Logistics (Americas) Inc. ("Yusen").
22 The delivery of the Product commenced on March 8, 2021 and continued over the
23 course of the next month.

24 25. On March 9, 2021, ER representative Matthew Dweck, acting on behalf
25 of defendants, spoke by telephone with Pixior manager Christopher Motasky. Dweck
26 confirmed that the terms of agreement between ER and Pixior were those that had
27 been negotiated between Chuck Price and Simon Bouzaglou on February 26, 2021.
28 Dweck did not mention the Concealed Facts.

1 26. Pixior was ignorant of the Concealed Facts and had no reason to suspect
2 they were true. Had Pixior been aware of these facts, it would not have entered into
3 the Pixior Agreement or accepted the Product into its warehouse.

4 27. After accepting delivery of the Product, Pixior invoiced ER monthly for
5 the agreed fees. ER paid the fees only so long as Product was being delivered. As
6 soon as delivery was complete, ER ceased paying. Pixior demanded that ER pay the
7 bills. ER, Dweck, and Bibi have been unresponsive. Currently, over \$180,000 is
8 owed.

9 28. Subsequently, Pixior learned that, due to its chemical composition, the
10 Product would cost over \$500,000 to dispose of properly. Pixior demanded of Bibi
11 and ER that they remove the Product from the Pixior Warehouse. Again, both Bibi
12 and ER have been unresponsive.

13 29. Pixior demanded that Walmart pay the fees due and remove its Product.
14 Walmart has been unresponsive.

15 30. Pixior remains in possession of the Product. As a result, Pixior cannot
16 use its warehouse for other, paying customers and is losing business.

17 **Defendants Fraudulently Induce E-Comm**
18 **to Accept and Warehouse the Product**

19 31. E-Comm is in the business of providing warehousing and fulfillment
20 services for its customers. E-Comm has a warehouse in Riverside, CA.

21 32. On or around March 8, 2021, Price, acting on behalf of defendants,
22 telephoned E-Comm representative Cristobal Gastelum. Price repeated to Gastelum
23 in substance what Bibi had told Price: that ER had sold the Product to Walmart; the
24 Product was being returned, almost three million units, for relabeling; ER and
25 Walmart needed a place to store it temporarily, until it could be relabeled; and ER
26 would timely pay all of AWL's customary charges for receiving, storing, and handling
27 the Product. Price asked whether E-Comm could store the product, for these
28 purposes, at its warehouse located at 250 Palmyrita Avenue, Suite 1, Riverside,

1 California 92507 (the “E-Comm Warehouse”). Price and Gastelum discussed terms
2 and came to the following tentative agreement (the “E-Comm Agreement”):

- 3 • E-Comm would store the Product for a short term at the E-Comm
4 Warehouse, just until the Product could be relabeled;
- 5 • The fees would match those that AWL charged to ER, as set forth on
6 exhibit A, which is incorporated herein by reference;
- 7 • Bibi’s company, defendant ER, would pay the charges promptly upon
8 invoice.

9 Again, no mention was made of the Concealed Facts.

10 33. On March 8, 2021, ER representative Matthew Dweck, acting on behalf
11 of defendants, spoke by telephone with Price. Dweck confirmed that the terms of
12 agreement that had been negotiated between Chuck Price and Gastelum on March 8,
13 2021 were accepted by ER. Dweck did not mention the Concealed Facts.

14 34. On or about March 12, 2021, Walmart representatives contacted E-
15 Comm representative Gastelum to confirm that E-Comm would accept Product for
16 storage that was being returned from Walmart. E-Comm so confirmed. Walmart took
17 the lead in arranging for transportation of the Product to E-Comm. For these
18 purposes, Walmart used its own supply chain and logistics providers, Yusen and
19 Propack Corporation. The delivery of the Product commenced on March 15, 2021
20 and continued over the course of the next month.

21 35. E-Comm was ignorant of the Concealed Facts and had no reason to
22 suspect they were true. Had E-Comm been aware of these facts, it would not have
23 entered into the E-Comm Agreement or accepted the Product into its warehouse.

24 36. After accepting delivery of the Product, E-Comm invoiced ER monthly
25 for the agreed fees. ER paid the fees only so long as Product was being delivered. As
26 soon as delivery was complete, ER ceased paying. E-Comm demanded that ER pay
27 the bills. ER, Dweck, and Bibi have been unresponsive. Currently, over \$350,000 is
28 owed.

37. Subsequently, E-Comm learned that, due to its chemical composition, the Product would cost over \$500,000 to dispose of properly. E-Comm demanded of Bibi and ER that they remove the Product from the E-Comm Warehouse. Again, both Bibi and ER have been unresponsive.

38. E-Comm demanded that Walmart pay the fees due and remove its Product. Walmart has been unresponsive.

39. E-Comm remains in possession of the Product. As a result, E-Comm cannot use its warehouse for other, paying customers and is losing business and is now on the brink of financial collapse.

FIRST CAUSE OF ACTION

Breach of Contract

(By Pixior Against ER, Bibi and Does 1-5)

40. Pixior realleges and incorporates by reference all above paragraphs of this Complaint as though fully set forth herein.

41. On or about February 26, 2021, Pixior and ER entered into an oral agreement, the terms of which are:

- Pixior would store the Product for a short term at the Pixior Warehouse, just until the Product could be relabeled;
- The fees would match those that AWL charged to ER, as set forth on exhibit A, which is incorporated herein by reference;
- Bibi's company, defendant ER, would pay the charges promptly upon invoice.

42. Pixior has timely performed all terms, conditions, and covenants on its part to be performed pursuant to the Pixior Agreement, except to the extent that such performance has been prevented or otherwise excused by the conduct of the defendants as alleged herein.

43. Defendants breached the express terms, representations, and warranties contained in the Pixior Agreement by, among other things, failing to pay the amounts

1 due on the invoices for warehousing services and failing to retrieve and/or otherwise
2 dispose of the Product.

3 44. As a direct and proximate result of defendants' breaches of the Pixior
4 Agreement, Pixior has been damaged in an amount to be proven at trial, in excess of
5 \$1 million, and incurred incidental and consequential damages in excess of \$26
6 million.

7 **(By E-Comm Against ER, Bibi and Does 6-10)**

8 45. E-Comm realleges and incorporates by reference all above paragraphs of
9 this Complaint as though fully set forth herein.

10 46. On or about March 8, 2021, E-Comm and ER entered into an oral
11 agreement, the terms of which are:

- 12 • E-Comm would store the Product for a short term at the E-Comm
13 Warehouse, just until the Product could be relabeled;
- 14 • The fees would match those that AWL charged to ER, as set forth on
15 exhibit A, which is incorporated herein by reference;
- 16 • Bibi's company, defendant ER, would pay the charges promptly upon
17 invoice.

18 47. E-Comm has timely performed all terms, conditions, and covenants on its
19 part to be performed pursuant to the E-Comm Agreement, except to the extent that
20 such performance has been prevented or otherwise excused by the conduct of the
21 defendants as alleged herein.

22 48. Defendants breached the express terms, representations, and warranties
23 contained in the E-Comm Agreement by, among other things, failing to pay the
24 amounts due on the invoices for warehousing services and failing to retrieve and/or
25 otherwise dispose of the Product.

26 49. As a direct and proximate result of defendants' breaches of the
27 agreement, E-Comm has been damaged in an amount to be proven at trial, in excess of
28 \$1 million, and incurred incidental and consequential damages in excess of \$1.6

1 million.

2 **SECOND CAUSE OF ACTION**

3 **Fraudulent Concealment**

4 **(By Pixior Against ER, Bibi, and Does 1-5)**

5 50. Pixior realleges and incorporates herein by reference all above
6 paragraphs of this Complaint as though fully set forth herein.

7 51. On or about February 26, 2021, Pixior and ER entered into the Pixior
8 Agreement, pursuant to which Pixior agreed to accept the Product into its warehouse.

9 52. The Pixior Agreement was negotiated between defendants' representative
10 Price and Pixior's representative Bouzaglou. On information and belief, at the time of
11 the negotiation, defendants knew or had reason to believe that Price would repeat to
12 Bouzaglou the representations made by Bibi to Price, or the substance of those
13 representations, namely that: the Product did not meet EPA labeling standards;
14 Walmart was returning a large quantity, almost three million units, for relabeling;
15 Bibi, ostensibly acting on behalf of ER and Walmart, was asking whether the
16 warehouse could accept the returned Product for storage, for a short period of time,
17 until it could be relabeled; and ER would timely pay all of AWL's customary charges
18 for receiving, storing, and handling the Product. Further, defendants knew or had
19 reason to believe that Pixior would rely on these representations in deciding whether
20 to accept the Product for storage.

21 53. On information and belief, during the negotiation of the Pixior
22 Agreement, defendants were aware of, but failed to disclose the Concealed Facts.

23 54. Defendants were under a duty to disclose these facts to Pixior because:
24 • During the negotiation of the Pixior Agreement, defendants knew that
25 their representative Price would disclose some facts relating to the
26 return from Walmart of the Product and storage of the Product, but
27 Defendants intentionally failed to disclose the Concealed Facts,
28 making the facts actually disclosed deceptive; and

- Defendants intentionally failed to disclose the Concealed Facts, knowing that those facts were known only to defendants and not to Pixior and could not reasonably have been discovered by Pixior.

55. Defendants intended to deceive Pixior by concealing the facts listed above. Specifically, defendants intended to induce Pixior to enter into the Pixior Agreement and accept the Product into its warehouse.

56. Pixior did not know of the Concealed Facts. Had it been aware of the concealed facts, Pixior would not have entered into the Pixior Agreement or accepted the Product into its warehouse.

57. As a direct and proximate result of defendants' concealment of facts, as alleged above, Pixior has been damaged in a sum which is presently unknown but which is in excess of \$27 million and which will be shown according to proof at trial.

58. Pixior is informed and believes and thereon alleges that, in doing the acts hereinabove alleged, defendants acted with oppression, fraud, and malice, and in conscious disregard of the rights of Pixior, and Pixior is therefore entitled to punitive damages in an amount to be proven at trial.

(By E-Comm Against ER, Bibi, and Does 6-10)

59. E-Comm realleges and incorporates herein by reference all above paragraphs of this Complaint as though fully set forth herein.

60. In or about March 8, 2021, E-Comm and ER entered into the E-Comm Agreement, pursuant to which E-Comm agreed to accept the Product into its warehouse.

61. The E-Comm Agreement was negotiated by telephone between defendants' representative Price and Pixior's representative Gastelum. On information and belief, at the time of the negotiation, defendants knew or had reason to believe that Price would repeat to Gastelum the representations made by Bibi to Price, or the substance of those representations, namely that: the Product did not meet EPA labeling standards; Walmart was returning a large quantity, almost three million

1 units, for relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking
2 whether the warehouse could accept the returned Product for storage, for a short
3 period of time, until it could be relabeled; and ER would timely pay all of AWL's
4 customary charges for receiving, storing, and handling the Product. Further,
5 defendants knew or had reason to believe that E-Comm would rely on these
6 representations in deciding whether to accept the Product for storage.

7 62. On information and belief, during the negotiation of the E-Comm
8 Agreement, defendants were aware of, but failed to disclose the Concealed Facts.

9 63. Defendants were under a duty to disclose these facts to E-Comm
10 because:

- 11 • During the negotiation of the E-Comm Agreement, defendants knew
12 that their representative Price would disclose some facts relating to the
13 return from Walmart of the Product and storage of the Product, but
14 Defendants intentionally failed to disclose the Concealed Facts,
15 making the facts actually disclosed deceptive; and
- 16 • Defendants intentionally failed to disclose the Concealed Facts,
17 knowing that those facts were known only to defendants and not to E-
18 Comm and could not reasonably have been discovered by E-Comm.

19 64. Defendants intended to deceive E-Comm by concealing the facts listed
20 above. Specifically, defendants intended to induce E-Comm to enter into the E-
21 Comm Agreement and accept the Product into its warehouse.

22 65. E-Comm did not know of the concealed facts. Had it been aware of the
23 concealed facts, E-Comm would not have entered into the E-Comm Agreement or
24 accepted the Product into its warehouse.

25 66. As a direct and proximate result of defendants' concealment of facts, as
26 alleged above, E-Comm has been damaged in a sum which is presently unknown but
27 which is in excess of \$2.6 million and which will be shown according to proof at trial.

28 67. E-Comm is informed and believes and thereon alleges that, in doing the

acts hereinabove alleged, defendants acted with oppression, fraud, and malice, and in conscious disregard of the rights of E-Comm, and E-Comm is therefore entitled to punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

Intentional Misrepresentation

(By Pixior Against ER, Bibi and Does 1-5)

68. Pixior realleges and incorporates herein by reference all above paragraphs of this Complaint as though fully set forth herein.

69. On or about February 26, 2021, Pixior and ER entered into the Pixior Agreement, pursuant to which Pixior agreed to accept the Product into its warehouse.

70. The Pixior Agreement was negotiated by telephone between defendants' representative Price and Pixior's representative Bouzaglou. On information and belief, at the time of the negotiation, defendants knew or had reason to believe that Price would repeat to Bouzaglou the representations made by Bibi to Price, or the substance of those representations, namely that: the Product did not meet EPA labeling standards; Walmart was returning a large quantity, almost three million units, for relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking whether the warehouse could accept the returned Product for storage, for a short period of time, until it could be relabeled; and ER would timely pay all of AWL's customary charges for receiving, storing, and handling the Product. Further, defendants knew or had reason to believe that Pixior would rely on these representations in deciding whether to accept the Product for storage.

71. Pixior is informed and believes and thereon alleges that the facts represented above were false. The truth was:

- Defendants had no intention of relabeling the Product and returning it to Walmart;
- Walmart did not want the Product back;
- Defendants did not intend to leave the Product at the Pixior

1 Warehouse for only a short period of time; rather, Defendants
2 intended to abandon the Product there;

- 3 • Defendants had no intention of paying the warehousing charges that
4 would be incurred, pursuant to the Pixior Agreement; defendants were
5 financially incapable of paying those charges.

6 72. Defendants knew the representations alleged above were false when
7 made, or defendants made the representations recklessly and without regard for their
8 truth.

9 73. Defendants intended for Pixior to rely on the representations.
10 Specifically, defendants intended to induce Pixior to enter into the Pixior Agreement
11 and accept the Product into its warehouse.

12 74. Pixior did not know the representations were false and reasonably relied
13 on them in entering into the Pixior Agreement and accepting the Product into its
14 warehouse. Had Pixior been aware of the falsity of the representations, it would not
15 have entered into the Pixior Agreement or accepted the Product into its warehouse.

16 75. As a direct and proximate result of defendants' fraud, as alleged above,
17 Pixior has been damaged in a sum which is presently unknown but which is in excess
18 of \$27 million and which will be shown according to proof at trial.

19 76. Pixior is informed and believes and thereon alleges that, in doing the acts
20 hereinabove alleged, defendants acted with oppression, fraud, and malice, and in
21 conscious disregard of the rights of Pixior, and Pixior is therefore entitled to punitive
22 damages in an amount to be proven at trial.

23 **(By E-Comm Against ER, Bibi and Does 6-10)**

24 77. E-Comm realleges and incorporates herein by reference all above
25 paragraphs of this Complaint as though fully set forth herein.

26 78. On or about March 8, 2021, E-Comm and ER entered into the E-Comm
27 Agreement, pursuant to which E-Comm agreed to accept the Product into its
28 warehouse.

1 79. The E-Comm Agreement was negotiated by telephone between
2 defendants' representative Price and E-Comm's representative Gastelum. On
3 information and belief, at the time of the negotiation, defendants knew or had reason
4 to believe that Price would repeat to Gastelum the representations made by Bibi to
5 Price, or the substance of those representations, namely that: the Product did not meet
6 EPA labeling standards; Walmart was returning a large quantity, almost three million
7 units, for relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking
8 whether the warehouse could accept the returned Product for storage, for a short
9 period of time, until it could be relabeled; and ER would timely pay all of AWL's
10 customary charges for receiving, storing, and handling the Product. Further,
11 defendants knew or had reason to believe that E-Comm would rely on these
12 representations in deciding whether to accept the Product for storage.

13 80. E-Comm is informed and believes and thereon alleges that the facts
14 represented above were false. The truth was:

- 15 • Defendants had no intention of relabeling the Product and returning it
16 to Walmart;
- 17 • Walmart did not want the Product back;
- 18 • Defendants did not intend to leave the Product at the E-Comm
19 Warehouse for only a short period of time; rather, Defendants
20 intended to abandon the Product there;
- 21 • Defendants had no intention of paying the warehousing charges that
22 would be incurred, pursuant to the E-Comm Agreement; defendants
23 were financially incapable of paying those charges.

24 81. Defendants knew the representations alleged above were false when
25 made, or defendants made the representations recklessly and without regard for their
26 truth.

27 82. Defendants intended for E-Comm to rely on the representations.
28 Specifically, defendants intended to induce E-Comm to enter into the E-Comm

1 Agreement and accept the Product into its warehouse.

2 83. E-Comm did not know the representations were false and reasonably
3 relied on them in entering into the E-Comm Agreement and accepting the Product into
4 its warehouse. Had E-Comm been aware of the falsity of the representations, it would
5 not have entered into the E-Comm Agreement or accepted the Product into its
6 warehouse.

7 84. As a direct and proximate result of defendants' fraud, as alleged above,
8 E-Comm has been damaged in a sum which is presently unknown but which is in
9 excess of \$2.6 million and which will be shown according to proof at trial.

10 85. E-Comm is informed and believes and thereon alleges that, in doing the
11 acts hereinabove alleged, defendants acted with oppression, fraud, and malice, and in
12 conscious disregard of the rights of E-Comm, and E-Comm is therefore entitled to
13 punitive damages in an amount to be proven at trial.

14 **FOURTH CAUSE OF ACTION**

15 **Negligent Misrepresentation**

16 **(By Pixior Against ER, Bibi and Does 1-5)**

17 86. Pixior realleges and incorporates herein by reference all above
18 paragraphs of this Complaint as though fully set forth herein.

19 87. On or about February 26, 2021, Pixior and ER entered into the Pixior
20 Agreement, pursuant to which Pixior agreed to accept the Product into its warehouse.

21 88. The Pixior Agreement was negotiated by telephone between defendants'
22 representative Price and Pixior's representative Bouzaglou. On information and
23 belief, at the time of the negotiation, defendants knew or had reason to believe that
24 Price would repeat to Bouzaglou the representations made by Bibi to Price, or the
25 substance of those representations, namely that: the Product did not meet EPA
26 labeling standards; Walmart was returning a large quantity, almost three million units,
27 for relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking
28 whether the warehouse could accept the returned Product for storage, for a short

1 period of time, until it could be relabeled; and ER would timely pay all of AWL's
2 customary charges for receiving, storing, and handling the Product. Further,
3 defendants knew or had reason to believe that Pixior would rely on these
4 representations in deciding whether to accept the Product for storage.

5 89. Pixior is informed and believes and thereon alleges that the facts
6 represented above were false. The truth was:

- 7 • Defendants had no intention of relabeling the Product and returning it
8 to Walmart;
- 9 • Walmart did not want the Product back;
- 10 • Defendants did not intend to leave the Product at the Pixior
11 Warehouse for only a short period of time; rather, Defendants
12 intended to abandon the Product there;
- 13 • Defendants had no intention of paying the warehousing charges that
14 would be incurred, pursuant to the Pixior Agreement; defendants were
15 financially incapable of paying those charges.

16 90. Defendants may have honestly believed that the representations alleged
17 above were true when made, but defendants had no reasonable grounds for doing so.

18 91. Defendants intended for Pixior to rely on the representations.
19 Specifically, defendants intended to induce Pixior to enter into the Pixior Agreement
20 and accept the Product into its warehouse.

21 92. Pixior did not know the representations were false and reasonably relied
22 on them in entering into the Pixior Agreement and accepting the Product into its
23 warehouse. Had Pixior been aware of the falsity of the representations, it would not
24 have entered into the Pixior Agreement or accepted the Product into its warehouse.

25 93. As a direct and proximate result of defendants' fraud, as alleged above,
26 Pixior has been damaged in a sum which is presently unknown but which is in excess
27 of \$27 million and which will be shown according to proof at trial.

(By E-Comm Against ER, Bibi and Does 6-10)

94. E-Comm realleges and incorporates herein by reference all above paragraphs of this Complaint as though fully set forth herein.

95. On or about March 8, 2021, E-Comm and ER entered into the E-Comm Agreement, pursuant to which E-Comm agreed to accept the Product into its warehouse.

96. The E-Comm Agreement was negotiated by telephone between defendants' representative Price and E-Comm's representative Gastelum. On information and belief, at the time of the negotiation, defendants knew or had reason to believe that Price would repeat to Gastelum the representations made by Bibi to Price, or the substance of those representations, namely that: the Product did not meet EPA labeling standards; Walmart was returning a large quantity, almost three million units, for relabeling; Bibi, ostensibly acting on behalf of ER and Walmart, was asking whether the warehouse could accept the returned Product for storage, for a short period of time, until it could be relabeled; and ER would timely pay all of AWL's customary charges for receiving, storing, and handling the Product. Further, defendants knew or had reason to believe that E-Comm would rely on these representations in deciding whether to accept the Product for storage.

97. E-Comm is informed and believes and thereon alleges that the facts represented above were false. The truth was:

- Defendants had no intention of relabeling the Product and returning it to Walmart;
- Walmart did not want the Product back;
- Defendants did not intend to leave the Product at the E-Comm Warehouse for only a short period of time; rather, Defendants intended to abandon the Product there;
- Defendants had no intention of paying the warehousing charges that

1 would be incurred, pursuant to the E-Comm Agreement; defendants
2 were financially incapable of paying those charges.

3 98. Defendants may have honestly believed that the representations alleged
4 above were true when made, but defendants had no reasonable grounds for doing so.

5 99. Defendants intended for E-Comm to rely on the representations.
6 Specifically, defendants intended to induce E-Comm to enter into the E-Comm
7 Agreement and accept the Product into its warehouse.

8 100. E-Comm did not know the representations were false and reasonably
9 relied on them in entering into the E-Comm Agreement and accepting the Product into
10 its warehouse. Had E-Comm been aware of the falsity of the representations, it would
11 not have entered into the E-Comm Agreement or accepted the Product into its
12 warehouse.

13 101. As a direct and proximate result of defendants' fraud, as alleged above,
14 E-Comm has been damaged in a sum which is presently unknown but which is in
15 excess of \$2.6 million and which will be shown according to proof at trial.

16 **FIFTH CAUSE OF ACTION**

17 **Unfair Business Practices**

18 **(By Pixior Against Walmart, ER, Bibi and Does 1-5)**

19 102. Pixior realleges and incorporates herein by reference all above
20 paragraphs of this Complaint as though fully set forth herein.

21 103. Over the course of their business dealings with Pixior, defendants
22 violated California's unfair competition law, Business & Professions Code section
23 17200, et seq., by committing unlawful, unfair and/or fraudulent acts including, but
24 not limited to, abandoning products at Pixior's warehouse that were worthless and
25 require special handling for disposal.

26 104. As a result of these acts, Pixior has suffered economic injury, and
27 defendants have acquired money or property from Pixior unfairly.

28 105. Unless defendants are restrained from continuing these acts of unfair

1 competition, Pixior will continue to lose customers, and suffer irreparable harm to its
2 business and property, and may be forced to bring a multiplicity of actions.

3 **(By E-Comm Against Walmart, ER, Bibi and Does 6-10)**

4 106. E-Comm realleges and incorporates herein by reference all above
5 paragraphs of this Complaint as though fully set forth herein.

6 107. Over the course of their business dealings with E-Comm, defendants
7 violated California's unfair competition law, Business & Professions Code section
8 17200, et seq., by committing unlawful, unfair and/or fraudulent acts including, but
9 not limited to, abandoning products at E-Comm's warehouse, that were worthless and
10 require special handling for disposal.

11 108. As a result of these acts, E-Comm has suffered economic injury, and
12 defendants have acquired money or property from E-Comm unfairly.

13 109. Unless defendants are restrained from continuing these acts of unfair
14 competition, E-Comm will continue to lose customers, and suffer irreparable harm to
15 its business and property, and may be forced to bring a multiplicity of actions.

16 **SIXTH CAUSE OF ACTION**

17 **Quantum Meruit**

18 **(By Pixior Against Walmart, ER, Bibi and Does 1-5)**

19 110. Pixior realleges and incorporates by reference all above paragraphs of this
20 Complaint as though fully set forth herein.

21 111. In or about February and March, 2021, defendants requested, by words and
22 conduct, that Pixior perform warehousing services for the benefit of defendants.

23 112. Pixior performed the services as requested.

24 113. Defendants have not paid for the services.

25 114. The reasonable value of the services is an amount to be proven at trial in
26 excess of \$1 million.

(By E-Comm Against Walmart, ER, Bibi and Does 6-10)

115. E-Comm realleges and incorporates by reference all above paragraphs of this Complaint as though fully set forth herein.

116. In or about March and April, 2021, defendants requested, by words and conduct, that E-Comm perform warehousing services for the benefit of defendants.

117. E-Comm performed the services as requested.

118. Defendants have not paid for the services.

119. The reasonable value of the services is an amount to be proven at trial in excess of \$1 million.

PRAYER

WHEREFORE, Plaintiffs each pray for judgment as follows:

1. For compensatory damages in an amount to be proven at trial, in excess of \$29.6 million;

2. For restitution of all money and property unfairly acquired by defendants from Plaintiffs;

3. For exemplary and punitive damages according to proof;

4. For prejudgment interest as provided by law;

5. For costs and attorney's fees incurred herein;

6. For a preliminary and permanent injunction requiring defendants to remove the Product from plaintiffs' warehouses and properly dispose of it; and

7. For such further and additional relief as the Court deems just and proper.

Dated: April 1, 2022

ROSS LLP

By: /s/ Peter W. Ross
Peter W. Ross
Counsel for Plaintiffs
Pixior Global Logistics, LLC and
E-Comm Fulfillment 3PL

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury for all issues so triable.

Dated: April 1, 2022

ROSS LLP

By: /s/ Peter W. Ross
Peter W. Ross
Counsel for Plaintiffs
Pixior Global Logistics, LLC and
E-Comm Fulfillment 3PL